

**RESOLUTION
R-19-109**

CITY HALL: March 28, 2019

HW
**BY: COUNCILMEMBERS MORENO, WILLIAMS, GIARRUSSO, BANKS
AND BROSSETT**

**RESOLUTION AND ORDER
ESTABLISHING A DOCKET AND OPENING A RULEMAKING PROCEEDING
TO ESTABLISH RENEWABLE PORTFOLIO STANDARDS**

DOCKET NO. UD-19-01

WHEREAS, pursuant to the Constitution of the State of Louisiana and the Home Rule Charter of the City of New Orleans (“Charter”), the Council of the City of New Orleans (“Council”) is the governmental body with the power of supervision, regulation, and control over public utilities providing service within the City of New Orleans; and

WHEREAS, pursuant to its powers of supervision, regulation, and control over public utilities, the Council is responsible for fixing and changing rates and charges of public utilities and making all necessary rules and regulations to govern applications for the fixing and changing of rates and charges of public utilities; and

WHEREAS, Entergy New Orleans, LLC (“ENO”) is a public utility providing electric and natural gas service to all of New Orleans; and

WHEREAS, the Council has repeatedly expressed support for the efficient use of clean sustainable technology to improve the quality of life for our citizens and businesses; and

WHEREAS, as a result of the Council’s efforts, working with ENO regarding its resource portfolio over the last decade, ENO’s carbon emissions are already 50% below the

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national average with less than 4% of its energy portfolio coming from coal and 2016 statistics indicating that number may be as small as 2%; and

WHEREAS, the Council has also pressed ENO for greater use of renewable generation resources, which has resulted in a written commitment by ENO to add up to 100 MW of zero carbon-emitting renewables to its energy portfolio; and

WHEREAS, 29 states plus Washington D.C. and 3 U.S. territories have a Renewable Portfolio Standard (“RPS”), while another 8 states and 1 territory have a Renewable Portfolio Goal¹; and

WHEREAS, there are several essential topics that should be addressed in any RPS, including what percentage of the utility’s load must be met with power generated from renewable resources, by what year, and whether to include incremental targets that the utility must meet; and

WHEREAS, Washington D.C. currently has the most aggressive RPS, which requires 20% renewables by 2020 and 100% renewables by 2032.² Hawaii has also been one of the most aggressive states on RPS, requiring 100% renewables by 2045, with an interim requirement of 30% renewables by 2020.³ Meanwhile, other states have established much more modest goals, such as North Carolina’s goal of achieving 12.5% renewables by 2021,⁴ with many states in between those two extremes; and

WHEREAS, another important issue to be addressed in an RPS is what resources qualify as renewable resources for purposes of meeting the RPS requirements; and

¹ U.S. Department of Energy and NC Clean Energy Technology Center DSIRE, *Renewable Portfolio Standard Policies* (Oct. 2018), <http://ncsolarcen-prod.s3.amazonaws.com/wp-content/uploads/2018/10/Renewable-Portfolio-Standards-2018.pdf>.

² *Accord* D.C. Code § 34-1431 (2018), with CleanEnergy DC Omnibus Amendment Act of 2018.

³ Hawai’i Rev. Stat. § 269-92 (2018).

⁴ N.C. Gen. Stat. § 62-133.8(b)(1) (2018); *see also* Lawrence Berkeley National Laboratory, U.S. Renewables Portfolio Standards, 2017 Annual Status Report at p. 6 <https://emp.lbl.gov/sites/default/files/2017-annual-rps-summary-report.pdf>.

WHEREAS, various states have included the following resources within their definition of resources eligible to be used to meet an RPS requirement: Solar Photovoltaics, On-Shore Wind, Off-Shore Wind, Solar Water Heat, Solar Space Heat, Geothermal Electric, Solar Thermal Electric, Solar Thermal Process Heat, Biomass, Hydroelectric, Geothermal Heat Pumps, Municipal Solid Waste, Combined Heat & Power, Fuel Cells using Non-Renewable Fuels, Landfill Gas, Anaerobic Digestion, Fuel Cells using Renewable Fuels, Other Distributed Generation Technologies; and

WHEREAS, while, for example, Arizona considers Solar Water Heat, Solar Space Heat, Geothermal Electric, Solar Thermal Electric, Solar Thermal Process Heat, Solar Photovoltaics, Wind (All), Biomass, Hydroelectric, Geothermal Heat Pumps, Combined Heat & Power, Landfill Gas, Wind (Small), Hydroelectric (Small), Geothermal Direct-Use, Anaerobic Digestion, and Fuel Cells using Renewable Fuels to be renewable resources under its RPS,⁵ New York only considers Solar Photovoltaics, Wind (All), Biomass, Fuel Cells using Non-Renewable Fuels, Tidal, Hydroelectric (Small), Anaerobic Digestion, and Fuel Cells using Renewable Fuels to be “renewables” under its RPS;⁶ and

WHEREAS, another issue to be considered with respect to establishing an RPS for New Orleans is whether or not to require that a specific percentage of the RPS be met through specified types of resources. Some states require that a certain percentage of their RPS be met through solar resources and some have required that a certain percentage be met through distributed generation; and

⁵ Ariz. Admin. Code § 14-2-1802 (2018).

⁶ *Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard*, N.Y. Pub. Serv. Comm. Case 03-E-0188, at Appendix B - RPS Main Tier Eligible Electric Generation Sources (Sept. 24, 2004), <https://www.nyserda.ny.gov/-/media/Files/Programs/Clean-Energy-Communities/MainTier-Resources-order-appendixB.pdf>.

WHEREAS, for example, while many states have no such requirement, Arizona requires that distributed generation compose 30% of the annual RPS requirement⁷ and Colorado requires that 3% of retail sales be from distributed generation resources by 2020 of which half must be retail distributed generation serving on-site load.⁸ Colorado also allows multipliers for community-based projects.⁹ Meanwhile, Illinois requires that wind compose 75% of the annual RPS requirement, solar PV compose 6% and distributed generation compose 1%.¹⁰ North Carolina's RPS sought to prioritize very specific types of renewables by requiring swine waste-fueled resources to be 0.2% of the RPS by 2020, poultry waste to be 900,000 MWh by 2016, and solar to be 0.2% of the RPS by 2018 while providing triple credit for RECs generated by the first 20 MW of a biomass facility located at a "cleanfields renewable energy demonstration park;"¹¹ and

WHEREAS, such requirements within an RPS allow a state to advance specific goals, and careful consideration should be given to the particular needs of the jurisdiction establishing the RPS; and

WHEREAS, many state regulators have also considered the location of the renewable resources used to satisfy the RPS requirements to be important. Many state regulators, particularly those seeking to encourage the development of the in-state renewables industry, would prefer to meet the RPS requirement with in-state renewable resources, however, a straightforward requirement for in-state resources risks running afoul of the dormant Commerce Clause of the United States Constitution by placing a restraint on interstate commerce, though some states have put in such requirements. Other states have attempted to work around the

⁷ Ariz. Admin. Code § 14-2-703(F)(5).

⁸ Colo. Rev. Stat. § 40-2-124(1)(c) (2018).

⁹ *Id.* § 40-2-124(1)(c)(VI).

¹⁰ 20 Ill. Comp. Stat. 3855 § 1-75(c) (2018).

¹¹ N.C. Gen. Stat. § 62-133.8.

dormant Commerce Clause issues by creating a requirement that the resources be proven to be deliverable into the state, or by adding incentives for distributed generation resources or providing extra credit toward meeting the RPS requirement for in-state resources; and

WHEREAS, for example, Arizona provides multipliers for in-state solar and in-state manufactured components and distributed solar,¹² meaning that those types of renewable resources count more toward meeting an RPS standard than other renewable resources, while Connecticut provides multipliers for in-state customer-sited PV and fuel cells, in-state wind turbines, offshore wind, solar and wind manufactured partly in-state or using local labor;¹³ and

WHEREAS, another important issue for an RPS requirement to address is whether the utility may satisfy the RPS requirement through the purchase of Renewable Energy Credits (“RECs”). A REC is a credit that a renewable energy generator receives for every 1,000 kWh or 1 MWh of electricity it produces. The REC can be used by the owner of the generator to satisfy its own RPS requirement (in which case the REC is considered “retired”) or if the owner does not need the REC to satisfy its own RPS requirement, it can sell the REC to another utility, with or without the accompanying energy. RECs can allow a utility to satisfy its RPS requirement without the expense of acquiring energy or capacity that it does not need to serve its customers which can help control costs, however, use of RECs does allow a utility to purchase a REC from a distant generator while continuing to use all of its closer non-renewable resources to actually provide the necessary power, much as it did prior to the RPS requirement going into place. For this reason, some regulators have attempted to put limits on the use of RECs; and

WHEREAS, there are several different mechanisms that regulators have used to limit the use of RECs including a requirement that the RECs are from resources that can be demonstrated

¹² Ariz. Admin. Code § 14-2-1618.

¹³ Conn. Gen. Stat. § 16-244r (2018).

to be deliverable in-state, limiting the percentage of the RPS requirement that can be met through out-of-state RECs or limiting it to RECs generated in the same region or RTO service territory. Given that the state of Louisiana has no RPS requirement that would spur the development of an in-state market of RECs, such a requirement may prove particularly difficult for New Orleans to implement with success; and

WHEREAS, 32 states allow RECs to count toward meeting the RPS requirement, and only 6 do not allow the use of RECs. In the states that allow the use of RECs, RECs are generally treated the same as other renewable resources in terms of whether a particular percentage of them must be from in-state resources or for particular types of resources like solar or distributed generation. Of the 32 states that allow the use of RECs, 25 specify that RECs must be used within a certain period of time from when they are generated, the strictest states require it be used within one year of generation, others states have set rules that RECs expire anywhere from two to five years from the time they are generated. Setting a longer expiration date would allow utilities that generate extra RECs in one year to either bank them for use in future years when they are short, or to sell them in future years if they continue to not need the RECs for themselves; and

WHEREAS, allowing the use of RECs would also allow an additional potential income stream for community solar project participants and other local renewable distributed generation projects, assuming that a method of certifying such RECs could be designed;¹⁴ and

¹⁴ The Council notes that at the present time, there is no viable way to measure how much electricity rooftop solar units participating in the net metering program are generating, and thus, calculating a true REC value for them may not be possible. This is because those units are connected directly to the customer's home behind the Entergy meter, and therefore the meter only measures the excess energy that the customer sells back to ENO. A REC value calculation may be possible for that portion of the energy, but the rules also do not currently state whether a REC generated from the net metering unit would belong to the customer or to ENO. The Council welcomes comments on these issues as well.

WHEREAS, another issue that should be considered is what penalty applies if the utility fails to implement the rule. Seventeen states do not impose any penalty for failure to meet the RPS standard in a particular year.¹⁵ Four states allow their commission the discretion to set penalties while two set forth a particular method of calculating the penalty.¹⁶ Thirteen states impose an alternative minimum payment to be made by the utility in the event the utility falls short of the RPS requirement that is either a set sum or a price per MWh of the shortfall;¹⁷ and

WHEREAS, another issue of significant importance is whether ratepayer protection measures should be incorporated into the RPS. New Orleans has a very low median household income, which means that utility bills constitute a much higher percentage of that median household income – New Orleans residents have a higher “energy burden” than many other areas – and so careful attention must be paid to the rate impact of any energy-related measures. Some states have felt it necessary to include protections in the event that the utility’s compliance with an RPS causes rates to increase; and

WHEREAS, rate protections can take many forms. Seven states have put cost caps on the RPS to limit the impact on ratepayer bills by releasing the utility from the RPS obligation if the incremental cost of compliance with the RPS would increase customer bills beyond a specific threshold, and four others have alternative methods of limiting impact of the RPS compliance on ratepayers.¹⁸ Some states have specified that when a utility cannot meet the RPS obligation in a given year due to the rate impact cap, the utility may be required to “catch up” to its obligations in future years when the costs of renewables have declined. This could result in a delay in the

¹⁵ U.S. Department of Energy and NC Clean Energy Technology Center DSIRE website: <http://programs.dsireusa.org/system/program>.

¹⁶ U.S. Department of Energy and NC Clean Energy Technology Center DSIRE website: <http://programs.dsireusa.org/system/program>.

¹⁷ U.S. Department of Energy and NC Clean Energy Technology Center DSIRE website: <http://programs.dsireusa.org/system/program>.

¹⁸ U.S. Department of Energy and NC Clean Energy Technology Center DSIRE website: <http://programs.dsireusa.org/system/program>.

achievement of RPS goals, but would allow for the possibility of attaining the end goal if it can be done in future years without undue ratepayer impact. As discussed above, thirteen other states have created an “alternative compliance payment” that a utility would pay if they fail to meet the RPS, with such funds often being used to assist in-state renewable generators.¹⁹ This functions both as a penalty for failure to meet the RPS standard and a ratepayer protection because it can also have the effect of sending the utilities a price signal – if the price of renewables or RECs exceeds the alternative compliance payment price, then the utility would be more prudent to make the alternative compliance payment than to purchase renewables or RECs. In that scenario, the availability of the alternative compliance payment could help keep the costs of the RPS compliance down. For example, the Council could adopt an alternative payment structure where, if ENO could not satisfy the RPS without raising rates by more than 1% (or approximately \$1 per month on an average ratepayer bill), ENO would make an alternative compliance payment of approximately \$4.5 million as directed by the Council. This would ensure that the impact of the RPS would not be more than 1% per year, and the Council could then direct that the Alternative Payment funds toward furthering the growth of the renewable industry in New Orleans; and

WHEREAS, the Council welcomes comment from the public and ENO on any aspect of a potential RPS for New Orleans, and specifically requests comments and input from the public and ENO regarding the following questions:

1. What would an appropriate RPS target for New Orleans be, and should it be a requirement or a goal?

¹⁹ U.S. Department of Energy and NC Clean Energy Technology Center DSIRE website: <http://programs.dsireusa.org/system/program>.

- a. What percentage of ENO's load should be met through renewable resources, and what data or other information exists indicating that the target is achievable in New Orleans?
 - b. In what year should ENO be required to meet this target, and should ENO have specific, incremental targets to meet?
- 2. How should a New Orleans RPS target be satisfied?
 - a. Should ENO be allowed to purchase RECs to satisfy the requirement, and if so what, if any, limitations should be applied to the use of RECs? If RECs are allowed, how should they be certified or verified?
 - b. What resources should be included in the definition of resources that may be used to meet the target (whether through the addition of resources to ENO's system or through the purchase of RECs) -- Solar Water Heat, Solar Space Heat, Geothermal Electric, Solar Thermal Electric, Solar Thermal Process Heat, Solar Photovoltaics, Wind (Large and Small), Biomass, Hydroelectric, Geothermal Heat Pumps, Combined Heat & Power, Landfill Gas, Hydroelectric (Large and Small), Geothermal Direct-Use, Anaerobic Digestion, Fuel Cells using Renewable Fuels, other?
 - c. Should there be a requirement that some portion of the RPS must be met through specific types of renewables (or RECs), such as solar or distributed generation?
 - d. Should the Council consider adopting a method of encouraging local renewable resources, such as by providing ENO with greater credit toward meeting the RPS requirement for local resources than for remote resources?

3. How should the RPS standard be enforced, should the Council consider a penalty or Alternative Compliance Payment structure?
4. What protections should be put in place to protect ratepayers from unreasonable increases in rates due to the RPS?
 - a. What would be an unacceptable level of rate impact resulting from compliance with an RPS?
 - b. If a limit on rate impact is established, how should it be structured -- as a flat cap, as an Alternative Compliance Payment structure, or through some other structure?

WHEREAS, the Council is very interested in receiving such input from ENO and from the public on this topic; now, therefore:

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS
THAT:

1. The Council establishes Docket No. UD-19-01 to consider *A Rulemaking Proceeding to Establish Renewable Portfolio Standards*.
2. The Honorable Jeffrey Gulin is hereby appointed as Hearing Officer in this docket to preside over the proceedings and rule on procedural disputes, including motions and discovery, and shall, for good cause shown and as required by the circumstances of the proceeding, have the authority to change or amend the procedural dates set forth herein.

3. To the extent that the City Clerk's office closes before 5:00 pm on the date of any deadline contained herein or otherwise set by the Hearing Officer, the deadline shall be extended to the next business day.
4. The Council adopts the following procedural schedule:
 - a. ENO and the Council's Advisors are designated as parties to this proceeding. Other interested parties shall intervene in the case by May 1, 2019. Persons desiring to intervene shall do so by filing a motion to intervene with the Clerk of Council and paying the applicable filing fee, unless such fee is waived pursuant to Council Resolution No. R-16-365, with a copy submitted to Chief Council Utility Regulatory Office, Room 6E07 City Hall, 1300 Perdido Street, New Orleans, LA 70112. The Council's requirements for motions to intervene may be found in the City Code (which is available on the Council's website) at sections 158-236, 158-240, 158-286, 158-287, 158-322, and 158-324. Objections to intervention requests shall be filed within five days of such requests. Timely-filed intervention requests not objected to within that time period shall be deemed GRANTED.
 - b. Comments from all parties regarding the establishment of a Renewable Portfolio Standard shall be filed no later than June 3, 2019.
 - c. Reply comments shall be filed no later than July 1, 2019.
 - d. An Advisors' Report responding to the comments and reply comments and providing the Advisors' recommendations to the Council with a draft RPS requirement shall be filed no later than September 2, 2019.
 - e. Comments regarding the draft RPS shall be filed no later than October 1, 2019.
 - f. Reply comments regarding the draft RPS shall be filed no later than October 15, 2019.

**THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED
ON THE ADOPTION THEREOF AND RESULTED AS FOLLOWS:**

YEAS:

NAYS:

ABSENT:

AND THE RESOLUTION WAS ADOPTED.